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AUG 18 2005

OFFICE OF PETITIONS

In re Application of :
Terry, Pasko, Wyatt, Herrick, Marriot, Alvey, and Weingard :
Application No. 10/763,990 : DECISION REFUSING STATUS
Filed: January 23, 2004 : UNDER 37 CFR 1.47(a)
Attorney Docket No. TEC1290-01 :
For: INTEGRATED HVACR CONTROL AND PROTECTION
SYSTEM

This is a decision on the petition under 37 CFR 1.47(a) filed July 5, 2005.

The petition under 37 CFR 1.47(a) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Failure to respond will result in the abandonment of this application. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a).

The above-identified application was filed on January 23, 2004, and was not accompanied by a properly executed oath or declaration. A Notice to File Missing Parts of Nonprovisional Application was mailed on January 14, 2005, requiring a proper oath or declaration and allowing an extendable period for reply of two months from its mailing date. The instant petition was filed on July 5, 2005, with a request for an extension of time within the fourth month.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee,
- (4) a statement of the last known address of the non-signing inventor,

The instant petition lacks item (2) as set forth above.

As to item (2), Section 409.03 of the *Manual of Patent Examining Procedure* (MPEP) provides, in pertinent part, that:

(A) All the available joint inventors must (1) make oath or declaration on their own behalf as required by 37 CFR 1.63 or 1.175 (see MPEP § 602 § 605.01, and § 1414) and (2) make oath or declaration on behalf of the nonsigning inventor as required by 37 CFR 1.64. An oath or declaration signed by all of the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

The declaration filed on October 1, 2004, is defective because it does not contain a blank signature block for inventor Weingard. Without this signature block, the available joint inventors cannot be said to have executed the declaration on their own behalf and on behalf of inventor Weingard. The declaration filed July 5, 2005, by which the joint inventors sign the declaration on behalf of the inventor Weingard is also defective because it indicates that the declaration is made under 37 CFR 1.47(b). Title 37, Section 1.47(b) of the Code of Federal Regulations only applies when there is no inventor available or willing to execute the declaration. As there are joint inventors available in this case, 37 CFR 1.47(b) is not applicable. A proper declaration, preferably one that is formatted according to MPEP § 409.03 cited above, must accompany any renewed petition filed

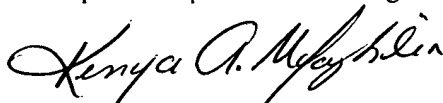
Deposit account 02-0385 will be charged an additional \$70.00 for the instant petition fee, which is \$200.00. See 37 CFR 1.47 and 37 CFR 1.17(g).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents,
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 272-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions